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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 695

UNITED STATES OF AMERICA, *Appellant*,

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, Officer Thereof.

On Appeal From the United States District Court
For the District of Columbia

BRIEF ON BEHALF OF AMERICAN FEDERATION OF LABOR, AMICUS CURIAE

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INTEREST IN PROCEEDINGS

The American Federation of Labor has requested and has been granted permission to file a brief in this matter as amicus curiæ. Its great interest in this case arises out of the fact (1) that it, like the respondent organization herein, issues various publications and distributes them to its membership and to the public generally; (2) that most of the 104 National and International Unions affiliated with it issue and distribute similar publications; and (3) that it has been the practice in the past, and it is hoped and expected to be the practice in the future, to utilize such publications to inform the membership and the public

of the qualifications or lack of qualifications of political candidates for federal office. Such publication is and has been in the tradition first formulated by Samuel Gompers of electing labor's friends and defeating labor's enemies. Under Section 304 of the Labor-Management Relations Act, 1947, Congress has attempted to proscribe the use of labor publications for such purpose.

The American Federation of Labor is further interested in the present proceedings for the reason that those of its affiliates which are unable, for financial or other reasons, to issue their own publications have customarily resorted to dissemination of their views concerning the qualifications of federal political candidates through the purchase of advertising space and radio time in commercial newspapers and radio stations, and one of such local affiliates, namely, Painters' Local Union No. 481, of Hartford, Conn., has been indicted by a federal grand jury under Section 304 for so doing.[1]

QUESTIONS TO BE DISCUSSED

It would, for the most part, be duplicitous to present further argument or citation of cases in support of the main constitutional points raised and discussed by respondents in their brief. Accordingly, this brief will be confined to a refutation of the two principal arguments advanced by the Government in support of the restrictions on political expenditures contained in Section 304 of the Labor-Management Relations Act of 1947. These arguments, in substance, are as follows: Whatever infringements on civil liberties exist under Section 304 are justified (1) under the power of Congress to keep pure the electoral processes, and (2) on the theory that Congress is seeking

[1] This case is *United States v. Painters Local Union No. 481 and John R. O'Brien*, in the District Court of the United States for the District of Connecticut. The defendants have filed a motion to dismiss the indictment on the grounds of the unconstitutionality of Section 304, which motion has been taken under advisement by the court after hearing arguments on March 19, 1948.

merely to protect the rights and interests of minority groups within labor organizations who might dissent from the political views of the majority and oppose expenditure of organization funds to disseminate such views.

A brief preliminary discussion concerning the close integration of political and economic activities in the ordinary functioning of labor organizations is relevant to a discussion of both of these foregoing arguments and is further indispensable to a proper realization of the impact of the restrictions in the Act upon labor organizations in particular, and as distinguished from corporations.

ARGUMENT

I

Political activities of labor organizations are indispensable to implement their economic activities; political and economic activities are so closely intertwined as to be inseparable.

In order adequately to represent the interests of its membership, a labor organization must perforce enter the political arena, and labor organizations have customarily and traditionally done so. The rights of freedom of speech and the press and the right of assembly are cognate rights (*Thomas* v. *Collins*, 323 U.S. 516), and the exercise of working men of their right of assembly by associating themselves together into labor unions is inseparable from their right to speak on matters which are of concern to them.

A labor organization is a voluntary association formed for the mutual betterment of its members. Individual workers join a labor union so as to derive the strength, influence and power that come from association and concerted action with others (*Gompers* v. *Buck Stove & Range Co.*, 221 U.S. 418); the union is constituted as their spokesman and as the vehicle for their collective expression and action.

Organized labor has learned from experience that political action cannot be disassociated from economic action. Properly to promote the welfare of its members and to protect their rights, a union cannot confine itself to the processes of collective bargaining alone.

While wages and hours and conditions of employment are paramount, they are by no means exclusive subjects of activity. An aggressive legislative program, for example, is an essential function of a labor organization. A union may not realistically bargain with an employer for higher wages and shorter hours and ignore legislation establishing minimum wages and maximum hours. And, of course, the obtaining of higher money wages is nullified unless real wages and purchasing power are protected by effectual government action from the assault of inflation. Similarly, a union's efforts to protect its members' interests may be directed on the one hand to seniority and job security provisions in collective bargaining agreements with employers, and on the other hand to social security, unemployment insurance, workmen's compensation, and health, sanitation and safety legislation, formulated far from the collective bargaining table in the halls of Congress or the state legislatures. The bargaining process, itself, is rendered insecure without legislative protection. This is particularly true in respect to legislation affecting women and minors; without such protections the standards of all workers would be imperiled. The compelling importance of union participation in such other legislative programs as housing and rent control, employment stability, fair employment practices, education and taxation has long been apparent.[2]

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[2] See *U. S. Department of Labor Monthly Labor Review* for March, 1947, at p. 400, where it is stated:

"One of the major efforts of labor unions in this country has been directed toward the standardization of working conditions throughout an industry or area, in order to lift sub-standard wages and to eliminate or reduce the factors of wages and hours in competitive costs. One of the ways the labor movement has sought to attain this objective has been by pressing for Federal or State legislation for the

Laws, good or bad, cannot be disassociated from the people who make them. A legislative program is ineffectual unless coupled with an active political program. So that government may be responsive to the will of the people (*Stromberg* v. *California*, 283 U.S. 359, and *DeJonge* v. *Oregon*, 299 U.S. 353), the legislators must be informed emphatically of the desires of their constituents. It can hardly be doubted that the responses of the legislators are keenest at election time. Thus the supporting of legislators who favor desirable legislation and the opposing of those who thwart it, is a necessary part of a legislative program.

Accordingly, the interest of a labor organization in elections and in the previous steps of the electoral process, including conventions and primaries, is not only proper, it is inevitable. The fulfill its obligations to its membership a labor organization must determine, formulate and give utterance to the views of its membership on legislative and political matters. With the realization that whether certain legislation will be enacted depends most frequently upon what persons are elected to office, a labor organization must be free to give expression to the views of its membership at election time; it must be free to support or oppose candidates on their record of the past and on their program for the future. To accomplish its purpose of the mutual betterment of its members a labor organization must speak to legislators and candidates as well as to employers; it must conduct activity in

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protection of certain groups of workers or to establish minimum standards applicable to all workers. Legislation has been sought especially for women and minors on the ground that the interests of society as a whole require that the health and welfare of these groups of workers be protected, and also because they often are in a weak bargaining position and might be used to lower the standards of all workers. Certain minimum standards of health, safety, and sanitation were established by legislation when large sections of the population felt a need for such, and the labor movement from time to time has favored legislative action as the most effective remedy for problems of health and safety. Under the Fair Labor Standards Act, minimum wage and hour standards have been established in much of American industry, thus raising the area of collective bargaining on these issues to higher levels."

the forum of public opinion as well as at the bargaining table.

The broad scope of contemporary interests and purposes of labor organizations in the legislative field is illustrated by Article II of the Constitution of the American Federation of Labor, entitled "Objects." This reads as follows:

Article II—Objects

SECTION 1. The object of this Federation shall be the encouragement and formation of local Trade and Labor Unions, and the closer federation of such societies through the organization of Central Trade and Labor Unions in every city, and the further combination of such bodies into State, Territorial, or Provincial organizations to secure legislation in the interest of the working masses.

SEC. 2. The establishment of National and International Trade Unions, based upon a strict recognition of the autonomy of each trade, and the promotion and advancement of such bodies.

SEC. 3. The establishment of Departments composed of National or International Unions affiliated with the American Federation of Labor, of the same industry, and which Departments shall be governed in conformity with the laws of the American Federation of Labor.

SEC. 4. An American Federation of all National and International Trade Unions, to aid and assist each other; to aid and encourage the sale of union label goods, and to secure legislation in the interest of the working people, and influence public opinion, by peaceful and legal methods, in favor of organized labor.

SEC. 5. To aid and encourage the labor press of America.

The constitutions of most of the National and International Unions affiliated with the American Federation of Labor are in similar vein.

None of the foregoing considerations are applicable to the ordinary business corporation. Corporations do not necessarily enter the political arena. Few, if any, corpora-

tions state as one of the objects of their incorporation the procuring of legislation in the interest of stockholders. A corporation is formed and established for purposes entirely different from that which labor organizations are formed and established. To view prohibitions on political expenditures by corporations in the same light as prohibitions on political expenditures by labor organizations is absurd and disregards the realities of our contemporary political and industrial life.

II

Under no circumstances can the infringements of civil liberties be justified on the theory that they are necessary to keep pure the electoral processes; rather does the purity of our elections depend upon the extent to which freedom of expression is protected and encouraged; the foreclosure of full discussion on political questions invites rather than prevents corruption.

It is contended that the infringement of the constitutional liberties affected by Section 304 is justified under the obligation of Congress to keep the electoral processes pure and free from corruption. The assertion that the stifling of freedom of expression, the silencing of millions of citizens speaking through their organizations, the muzzling of political argument and opinion, the assertion that these things are needful to keep pure our elections runs counter to every theory of democratic government and defeats the very purpose for which the Bill of Rights was written. The protection of political expression and of the right to criticize government and government officers was certainly the most important purpose of the First Amendment.

1. The preservation of freedom of political expression is an absolute requisite, without which our electoral processes cannot be kept pure.

It is axiomatic that purity of elections and freedom of government from corruption depend on freedom of ex-

pression. This proposition was recognized and affirmed in Revolutionary days and on innumerable occasions since then.

> "The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honorable and just modes of conducting affairs." (Letter of Continental Congress to Inhabitants of Quebec), *Journal of the Continental Congress* (1904 Ed.) Vol. I, pp. 104, 108.

President Madison, in his attack on the Alien and Sedition Laws of 1798, spoke of the "right of freely examining public character and measures, and of freely communicating thereon, which has ever been justly deemed the only effectual guardian of every other right." IV Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 561 (1836).[3]

In *Grosjean* v. *American Press Co., Inc.*, 297 U.S. 233, at p. 250, the Supreme Court declared that:

> "Since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern.

In the *Stromberg* case, *supra*, (at p. 369), the Court held:

> "The maintenance of the opportunity for free political discussion to the end that Government may be responsive to the will of the people and that changes

[3] See also letter of Jefferson to Lafayette quoted in *Writings of Thomas Jefferson* (Wash. Ed.), Vol. 37, p. 325.

may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."

Again, in *DeJonge* v. *Oregon, supra,* (at p. 365), the Court emphasized that "the greater the importance of safeguarding the community":

> "The more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly, in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."[4]

2. The suppression of freedom of political discussion invites corruption.

Just as the protection and encouragement of political expression safeguards democratic processes, so, correlatively, does the suppression of such expression invite corruption and prevent its redress. What safeguards are left if our legislators are permitted in a single enactment to promulgate legislation concerning—whether or not adversely—millions of people, and, at the same time, to silence those same millions from all effective criticism or even discussion of the enactment? It is submitted that Congress has attempted to do exactly that by the inclusion of Section 304 in the Labor-Management Relations Act, 1947.

In no way can it be urged that Section 304 is pertinent to labor-management relations. Although it is entirely foreign to the other provisions of the Act, yet it effectually silences the opponents of the Act. For when legislators are unresponsive to the will of their constituents, the

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[4] See also *Near v. Minnesota*, 283 U. S. 697; *Abrams v. United States*, 250 U. S. 616.

principal remedy those constituents have is to seek the defeat of the legislators when they desire continuation in office. To deprive those constituents, whether acting singly or in organizations of their own choice, from their right to political criticism at election time is to sterilize them politically and virtually to disenfranchise them. The result of such a situation would be to render the office holders immune from attack and to facilitate their perpetuation in office. The inherent opportunities for fraud and corruption are patent, and such a situation is intolerable in a democracy.

Section 304 is obviously "legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation." *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152 (footnote) (1938). If there were any doubt as to Congress' intention in including Section 304 in the Labor-Management Relations Act, 1947, the doubt is resolved by the application of the statute to the offenses alleged in the case at bar. For the sole purpose of the publication in question was to seek the defeat of a supporter of the Act and the election of a candidate pledged to amendment or repeal of the Act. Thus to stifle criticism can result only in the perpetuation of the Act in the body of our law and in the perpetuation of its supporters in office. This is a danger to our electoral processes and to free government itself which dwarfs the dangers asserted with regard to use of union funds in politics.

> *3. Labor in no way contributes or expends a disproportionate amount of the funds used in connection with political campaigns; no evidence has been adduced before Congress or elsewhere that contributions or expenditures by labor organizations constitute an evil or a danger to society.*

It is vigorously insisted that political expression by labor organizations, particularly in connection with elections and conventions, is salutory and beneficial and worthy of en-

couragement rather than limitation. But even the unsubstantiated "fears" that labor union treasuries constitute "aggregations of wealth," that such aggregations of wealth have been used in connection with the electoral process, and that such use places the electoral process in jeopardy are without basis in fact.

Contributions and expenditures by labor organizations in recent federal political campaigns have been an insignificant percentage of all contributions and expenditures, by the most extravagant estimates substantially less than 10 per cent. Contributions as such by labor organizations have been infrequent. Expenditures have been principally in connection with educational activities on political and legislative matters, and with "getting out the vote" in support of candidates whose record indicated that they would favor rather than oppose progressive social legislation.

While various reports of Congressional Committees contain some data on the budgets of labor groups for political purposes, we have been able to find no reference in Congressional findings or in floor debate to improper use of the money expended, to disproportionate, or even substantial, influence on the results of elections by such expenditures, or to any instance whatever where elections have been rendered "impure," or where fraud or corruption has resulted or could result from such expenditures.

Indeed, about the worst thing that has been said about labor's political activities was said by the 1945 House Special Committee with regard to the activities of political action committees. On page 3 of House Report No. 2093 (78th Cong. 2nd Sess.) the following appears:

> "The scale of operation of some of these organizations is impressive. Without exception, they operate on a Nation-wide basis; and many of them have affiliated local organizations. One was found to have an annual budget for 'educational' work approximating $1,500,000, and among other things regularly supplies

> over 500 radio stations with 'briefs for broadcasters.' Another, with an annual budget of over $300,000 for political 'education,' has distributed some 80,000,000 pieces of literature, including a quarter million copies of one article. Another, representing an organized labor membership of 5,000,000, has raised $700,000 for its national organizations in union contributions for political 'education' in a few months, and a great more has been raised for the same purpose and expended by its local organizations."

Congress was apparently more apprehensive of the exercise by labor of constitutional liberties than it was concerned with the illusory "danger" to society from such exercise.

But Congress has always recognized that expenditure of money in elections is not *per se* an evil.[5] Unless Section 304 can be supported on the ground that the limitation of civil rights is justified by a danger to society which is "real" and "imminent," arising out of expenditures by labor organizations, it cannot be supported on any ground at all. The fact that expenditures have been made and may continue to be made is not enough. There must be a positive basis in fact for the proposition that the making of such expenditures will lead to grave and immediate evils. The unsubstantiated "judgment" of Congress on this matter is not sufficient. The courts will be astute to examine the effects of the challenged legislation, and will answer independently the question as to the justification for the invasion of civil rights. See *Thomas* v. *Collins, supra.*

Even if a figure could be obtained representing the aggregate of all expenditures by labor organizations in connection with a national political campaign, that sum, when divided by the 15,000,000 members represented by organized labor, would be insignificant. When compared with the individual contributions of the country's large indus-

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[5] See Clark, *Federal Regulation of Election Campaign Activities* in 6 Federal Bar Journal.

trialists and their financial backers,[6] the minuteness of labor's expenditures appears in its proper perspective.[7]

Labor's part in politics, however, has been confined almost exclusively to the dissemination of information, a wholesome not a noxious activity. Its record in politics provides no basis for any type of regulation, much less regulation which trenches on guaranteed freedoms. No vague apprehension by the Congress that evils might result from political expenditures of labor organizations is sufficient to support the drastic destruction of civil rights accomplished by Section 304.[8]

The situation was very different in *United Public Workers* v. *Mitchell*, 330 U.S. 75, where the Court upheld the right of Congress to regulate limited political activities of government employees. The *Mitchell* case clearly presented a special problem. The limitation on political action was imposed on individuals of a particular category by virtue of the position they held; the closeness of federal employees to the functions of government, the special services of trust they render to the public, their exposure to pressure in connection with both government functions and political elections were all considered as grounds for special treatment. The Court commented on the unique relationship

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[6] In 1940, contributions of Lamont DuPont totaled $49,000, of Edgar Monsanto Queeny $40,375; the combined contributions of more than 60 members of the DuPont family totaled $200,000; the Pew family contributed $164,500; the Rockefellers, $100,000 (Sen. Rep. No. 47, 77th Cong. 1st Sess.). In 1944, the DuPonts gave $110,000; the Pews $97,000; the Mellons $59,500; the Guggenheims $28,000; the McCormicks $28,000; the Rockefellers $52,000 (Sen. Rep. No. 101, App. VIII, 79th Cong., 1st Sess.). It is to be noted that these figures represent contributions, not expenditures. In TNEC Monograph No. 29, Sen. Doc. 206, July 14, 1946, appears a listing of the corporations in which these families have a controlling or substantial interest or influence.

[7] See on this subject the several works of Overacker, particularly *Money in Elections, Presidential Campaign Funds, Party Campaign Funds* in 1932, 27 *Amer. Pol. Sci. Rev.* 769, *Campaign Finance in the Presidential Elections of 1940*, 35 *Amer. Pol. Sci. Rev.* 701; also *Odegard & Helms American Politics.*

[8] On the question of labor in politics, see Barbash, *Unions, Government and Politics*, 1 *Indust. & Labor Rel. Rev.* 66; Braunthal, *American Labor in Politics*, 12 Soc. Research 1; Frey 39 *American Federationist* 1012; Rosenfarb, *Labor's Role in the Election*, 8 *Pub. Op.* Q 376; Overacker, *Labor's Political Contributions*, 54 *Pol. Sci.* Q. 86.

of Congress and the administrative agencies to federal employees, stressing the responsibility for discipline and efficiency of the public service as part of a background against which the Court could not say that the restrictions were unconstitutional. In addition the Court carefully circumscribed the scope of its opinion to the approval of regulation "of such activities as Poole carried on," as to which it found that regulation was reasonable to forestall a "menace to the integrity and the competency" of government service. The *Mitchell* case, therefore, dealt in a specific manner with a problem which was *sui generis* and can in no way be considered as authority for a limitless curb on expression which would sterilize politically millions of citizens by preventing them from taking proper and desirable action through their organizations.

4. Abuses may be cured only by dealing with them specifically, not by curtailing basic rights.

It is by no means contended that Congress is powerless to act to cure abuses which threaten society or its institutions. Where it acts pursuant to the powers expressly conferred in or necessarily implied from the Constitution, it may pass reasonable laws designed to correct or prevent wrongdoing. Whether Congress is reasonably exercising permissive legislative powers is, of course, the principal question; but it has corollaries, not the least of which is that the cure may create evils worse than the disease.

The clear and present danger test is one means by which the Supreme Court assures that Congress may not create repression in an attempt to remedy fanciful or trivial wrongs, or even serious wrongs where they are not imminent. To the same end, the Supreme Court has insisted that the legislative remedy be designed narrowly to correct the specific wrong. The Court has announced and reiterated that where persons abuse rights created for their enjoyment, the solution is not to take away the rights but rather to attack the abuse itself.

The precise point was made by the Court in *DeJonge* v. *Oregon, supra* (at p. 364), when, though it conceded that the people through their legislators may protect themselves against abuse of the freedoms given them, it declared that

> "The legislative intervention can find constitutional justification by dealing with the abuse. The rights, themselves, must not be curtailed."

In the *Thornhill* case, 310 U.S. 88 (at p. 105), the Court invalidated an ordinance directed at picketing, which proscribed nearly every practicable means of public enlightenment and insisted that if there were a danger, the regulation must be "narrowly drawn to cover the precise situation giving rise to the danger." Similarly, in the *Schneider* v. *State*, 308 U.S. 147 (at p. 162), where the licensing requirement was defended on the basis of a need to prevent street littering, the Court pointed out that to protect freedom of speech and the press by striking down the licensing requirement did not deprive the city of all power to prevent street littering. "There are obvious methods to prevent littering," the Court stated: "Amongst these is punishment of those who actually throw papers on the streets."

In *Lovell* v. *Griffin*, 303 U.S. 444 (at p. 451), the Court invalidated the requirement for distributors to obtain a permit on the ground that it was:

> "not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of streets. The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the city manager.
>
> "We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press."

Under this controlling authority, it is clear that Con-

gress may not ban all political expression of labor unions to correct ephemeral abuses, or even to correct abuses which may actually be in existence. Thus if, under certain circumstances, unbridled freedom of expression tends to corruption, the remedy should be directed at the corruption and not at the right of speech. If the purpose is to prevent the unauthorized use of funds, or to protect the union membership from unreasonable use of power by union officers, or to prevent any other specific wrong,[9] the statute must be so drawn that it attacks the wrong directly and exclusively. Wholesale negation of constitutional liberties can never protect, but can only impair democratic processes.

Since, therefore, purity of elections depends on the encouragement of free political expression rather than its limitation; since its suppression can only facilitate corruption; since there were no facts before Congress establishing that labor union expenditures for political purposes endanger society; and since the statute is a broad abnegation of all rights rather than an attack on any specific wrong—it follows that Section 304 must fall as an unwarranted and unreasonable infringement of civil liberties and as a threat to democracy itself.

III

Action by a labor organization in the political field is taken for the membership as a whole, and no questions of minority disagreement are applicable.

It is also argued by the Government that an objection to labor union expenditures for political purposes is that

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[9] It is not suggested that Section 304 is in fact directed at any particular wrong such as those enumerated; indeed, in the absence of any authority in Congressional reports or debate, it must be presumed that Congress had no specific wrong in mind, but rather was acting deliberately to curb freedom of expression. The only hint as to a possible basis relates to the so-called "coercion of minority" argument widely used subsequent to the enactment to justify it; the reports are silent on this and the debates contain only a few isolated references, such as the rhetorical question of Senator Taft at 93 *Cong. Rec.* 6440: "Does the Senator think the union members should be forced to contribute . . . to the election of someone they do not favor?" This argument will be discussed infra.

there may be a minority whose views differ from those of the organization and that this minority would be coerced, possibly to the extent of contributing to the support of a candidate whom they did not favor.[10] The extension of this doctrine to its logical conclusion would result in the complete atomization of labor organizations and their eventual destruction.

Labor organization activity is group activity. But group activity is not predicated upon group unanimity. In voluntarily associating himself with a group, an individual seeks the benefits and advantages that come from association with his fellows. In return, however, for the added strength and influence that flows from action in concert with others, the individual necessarily must give up certain privileges which he might enjoy independent of the group. The American concept of government has its basis in the recognition of the will of the majority; it cannot be maintained that majority rule is inconsistent with democracy. Community activity and group activity are similarly based on majority rule; for complete independence of the individual negates the existence of a group.

In labor organizations, as in any other field in which groups function, it is clear that individual views and personal interests must be made secondary to group views and group interests. When a union, by majority action, determines the wage schedule it will seek in bargaining with an employer, the group is bound, though there may be individuals whose opinion it is that a higher or a lower wage schedule should be sought. That a seniority clause in a labor agreement benefits the senior employees to a greater extent than the junior employees in no way justifies the contention that it is invalidated on the theory that the junior employees are coerced into accepting it; for the junior employees are more than compensated by the protection afforded by the clause to the group as a whole and

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[10] See Note 9, *supra*.

by the advantages derived by their association with the group.

It cannot be contended that majority rule is any less appropriate to decisions having to do with the expenditure of funds for proper union purposes than it is appropriate to any other decisions of the union. An expenditure may be desirable to facilitate collective bargaining with the employer; if the union membership votes, or its authorized officers decide, to make such an expenditure, it may be properly made whether or not some of the individual members disagree with its purposes. So also if a union determines to spend money in support of particular legislation, the funds of the group may be spent although certain of its members may not favor that legislation. The situation is indistinguishable when the union votes, or its authorized officers decide, to spend money to give expression to the organization's views in support of or in opposition to a particular candidate for office on the basis of his legislative record or program, even though in the group there may be some who disagree with the organization's view with regard to that candidate.

By joining and remaining a member of a group, an individual obligates himself to comply with the proper decisions of the group. He is not absolved from his duties to contribute to group activities or finances merely because he disagrees with the determinations reached by the majority. A dissenting union member may not withdraw his dues and retain his status as a member; nor may he insist that his dues be not used for any particular lawful purpose of the group.

In *DeMille* v. *American Federation of Radio Artists*, 42 *American Labor Cases* 12 (certiorari denied by U. S. Supreme Court April 19, 1948), a unanimous California Supreme Court upheld the right of a union to engage in and make expenditures for political activity to promote the interests of the union. In that case the union assessed each of it members $1.00 to raise funds to oppose certain proposed

state legislation; DeMille favored the legislation, refused to pay the assessment and was expelled. The Court emphasized that his disagreement with the purposes of the majority did not free him from his obligations as a member, and that majority rule prevailed in all constitutional government and was essential to the effective functioning of labor organizations. The Court stated:

> "The principles involved and applicable to the facts are not new. Here novelty is present only in the assertion that the proper use of association funds may be avoided by a member who is committed to a minority view. Other organizations such as medical associations, bar associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority of its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference."

To argue that dissenters are not bound by majority decisions is to argue that they are separable from the group itself. This theory would lead out the minority on any given issue and the group existence would be destroyed.

It is equally indefensible to argue that it does not impair civil rights to deprive a labor union from political expression on the ground that the members favoring such expression can give utterance to it as individuals or as a separate group of their own. This argument results in leading out the majority on a given issue and is as destructive of group existence. To deprive a labor organization of civil rights cannot be justified on the premise that its individual members are free to form another group to exercise those rights.

It should be noted that Section 304 is in no way directed at the protection of the minority. Expenditures of a

labor organization are banned by the section even where the membership unanimously approves them. If Congress had drawn the statute narrowly so as to require the assent of the membership or so as to permit dissenting members to withdraw their respective contributions to the expenditure, it would still, we submit, be unconstitutional in light of the considerations stated above. But it is not so drawn and neither its context nor the debate prior to its enactment warrants the suggestion that the statute is anything less than a broadside assault on the freedom of political expression guaranteed by the First Amendment.

CONCLUSION

The First Amendment freedoms of speech, press, assembly and petition are among the most sacred in our heritage. So protected are they that the courts, discarding the usual presumption of validity attaching to legislative enactments, will determine independently whether infringements must be sanctioned to prevent imminent peril to society. The freedoms are to be enjoyed by labor organizations as well as by the individual members thereof, for otherwise the right to assemble for lawful purposes would have no meaning.

To ban expenditures made to facilitate the expression of opinion is to prohibit the expression itself, for without expenditures the communications media are not available. Moreover, the prohibition of political expenditures cures no danger to society. On the contrary, the silencing of political expression will place society in the gravest jeopardy. The record in this case is bare of any indication that political expenditures by labor organizations have created abuses or are likely so to do in the future; if such abuses should appear, Congress may deal with them directly, not by a broad denial of civil rights.

Labor organizations cannot fulfill their obligations to their membership without entering the political arena.

Political action by unions is a necessary and proper function. Such action is taken on behalf of the group, as a whole, and is proper as group activity, whether or not there is unanimity within the group.

The inclusion of the section prohibiting political expenditures in the Labor-Management Relations Act, 1947, tends to perpetuate legislation which at least a substantial number of the electorate consider bad. By stifling criticism at election time, it tends to perpetuate in office the sponsors and supporters of the legislation. Such a situation is intolerable in a democracy, for if public officers can immunize themselves to popular criticism, they need no longer be responsive to the will of the people.

On its face and as applied in the instant case, Section 304 is repugnant to the First Amendment, and constitutes a menace to civil rights which can be remedied only by its invalidation.

Respectfully submitted,

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